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of the ownership change and all subsequent years (an open year), an electing loss corporation must file an amended return for each prior affected year to reflect the elections. If, under the applicable statute of limitations, the loss corporation may not file an amended return for the year of the ownership change or any subsequent year (a closed year), an electing loss corporation must file an amended return for each affected open year to reflect the elections and the section 382 limitation resulting from the ownership change must be appropriately adjusted for the earliest open year (or years) to reflect the difference between the amount of pre-change losses actually used in closed years and the amount of pre-change losses that would have been used in such years applying the rules of paragraphs (j), (k), (l), (m)(2), (n)(2) of this section to the ownership change.

[T.D. 8388, 57 FR 346, Jan. 6, 1992; T.D. 8407, 57 FR 12210, Apr. 9, 1992. Redesignated by T.D. 8440, 57 FR 45712, 45713, Oct. 5, 1992; 57 FR 52827, Nov. 5, 1992; T.D. 8531, 59 FR 12840, Mar. 18, 1994; T.D. 8530, 59 FR 12843, Mar. 18, 1994; T.D. 8529, 59 FR 12846, Mar. 18, 1994]

§ 1.382-10 [Reserved]

§ 1.382-11 Effective dates. [Reserved]

§ 1.383-0 Effective date.

(a) The regulations under section 383 (other than the regulations described in paragraph (b) of this section) reflect the amendments made to sections 382 and 383 by the Tax Reform Act of 1986. See § 1.383-1(j) for effective date rules.

(b) Sections 1.383-1A, 1.383-2A, and 1.383-3A do not reflect the amendments made to sections 382 and 383 by the Tax Reform Act of 1986.

[T.D. 8352, 56 FR 29434, June 27, 1991]

§ 1.383-1 Special limitations on certain capital losses and excess credits.

(a) *Outline of topics.* In order to facilitate the use of this section, this paragraph lists the paragraphs, subparagraphs and subdivisions contained in this section.

- (a) Outline of topics.
- (b) In general.
- (c) Definitions.
- (l) Coordination with definitions and nomenclature used in section 382.

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- (2) Pre-change capital loss.
- (3) Pre-change credit.
- (4) Pre-change loss.
- (5) Regular tax liability.
- (6) Section 383 credit limitation.
 - (i) Definition.
 - (ii) Example.
- (d) Limitation on use of pre-change losses and pre-change credits.
 - (1) In general.
 - (2) Ordering rules for utilization of pre-change losses and pre-change credits and for absorption of the section 382 limitation and the section 383 credit limitation.
 - (3) Coordination with other limitations.
 - (i) In general.
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 - (e) Carryforward of unused section 382 limitation.
 - (1) Computation of carryforward amount.
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 - (3) Computation of section 383 credit reduction amount; illustration using tax rates and brackets in effect for calendar year 1988.
 - (4) Special rules for determining the section 383 credit reduction amount.
 - (i) Ordering rules.
 - (ii) Special rule for credits under section 38(a).
 - (f) Examples.
 - (g) Coordination with section 382 and the regulations thereunder.
 - (h) Alternative minimum tax.
 - (i) [Reserved]
 - (j) Effective date.
 - (k) Transitional rules regarding information statements

(b) *In general.* Under section 383, if an ownership change occurs with respect to a loss corporation, the section 382 limitation and the section 383 credit limitation (as defined in paragraph (c)(6) of this section) for a post-change year shall apply to limit the amount of taxable income and regular tax liability, respectively, that can be offset by pre-change capital losses and pre-change credits of the new loss corporation. The section 383 credit limitation for a post-change year bears a direct relationship to the amount, if any, of the section 382 limitation that remains after taking into account the reduction in the loss corporation's taxable income during a post-change year as a result of its pre-change losses (as defined in paragraph (c)(4) of this section). In general, the section 383 credit limitation is an amount equal to the tax liability of the new loss corporation for the post-change year which is attributable to so much of the corporation's taxable income that would be reduced

by allowing as a deduction its section 382 limitation remaining after accounting for the use of pre-change losses. As pre-change losses and pre-change credits of a corporation are used, they absorb the section 382 limitation and the section 383 credit limitation, respectively, in the manner prescribed by paragraph (d) of this section. See also section 382 and the regulations thereunder.

(c) *Definitions*—(1) *Coordination with definitions and nomenclature used in section 382.* Terms and nomenclature used in this section, and not otherwise defined herein, shall have the same respective meanings as in section 382 and the regulations thereunder, taking into account that the limitations of section 383 and this section apply to pre-change capital losses and pre-change credits.

(2) *Pre-change capital loss.* The term *pre-change capital loss* means—

(i) Any capital loss carryover under section 1212 of the old loss corporation to the taxable year ending on the change date or in which the change date occurs,

(ii) Any net capital loss of the old loss corporation for the taxable year in which the ownership change occurs, to the extent such loss is allocable to the period in such year ending on or before the change date, and

(iii) If the old loss corporation has a net unrealized built-in loss, any recognized built-in loss for any recognition period taxable year (within the meaning of section 382(h)) that is a capital loss.

(3) *Pre-change credit.* The term *pre-change credit* means—

(i) Any excess foreign taxes under section 904(c) of the old loss corporation—

(A) carried forward to the taxable year ending on the change date or in which the change date occurs, or

(B) carried forward from the taxable year that includes the change date, to the extent such credit is allocable to the period in such year ending on or before the change date,

(ii) Any credit under section 38 of the old loss corporation—

(A) carried forward to the taxable year ending on the change date or in which the change date occurs, or

(B) carried forward from a taxable year that includes the change date to the extent such credit is allocable to the period in such year ending on or before the change date, and

(iii) The available minimum tax credit of the old loss corporation under section 53 to the extent attributable to periods ending on or before the change date.

(4) *Pre-change loss.* Solely for purposes of this section, the term *prechange loss* means any pre-change loss described in § 1.382-2(a)(2) other than pre-change credits described in paragraph (c)(3) of this section.

(5) *Regular tax liability.* For purposes of this section, the term *regular tax liability* has the same meaning as provided in section 26(b).

(6) *Section 383 credit limitation*—(i) *Definition.* The *section 383 credit limitation* for a post-change year of a new loss corporation is an amount equal to the excess of—

(A) The new loss corporation's regular tax liability for the post-change year, over

(B) The new loss corporation's regular tax liability for the post-change year computed, for this purpose, by allowing as an additional deduction an amount equal to the section 382 limitation remaining after the application of paragraphs (d)(2)(i) through (iv) of this section.

(ii) *Example.*

L, a new loss corporation, is a calendar year taxpayer. L has an ownership change on December 31, 1987. For 1988, L has taxable income (prior to the use of any pre-change losses) of \$100,000. In addition, L has a section 382 limitation of \$25,000, a pre-change net operating loss carryover of \$12,000, a pre-change minimum tax credit of \$50,000, and no pre-change capital losses. L's section 383 credit limitation is the excess of its regular tax liability computed after allowing a \$12,000 net operating loss deduction (taxable income of \$88,000; regular tax liability of \$18,170), over its regular tax liability computed after allowing an additional deduction in the amount of L's section 382 limitation remaining after the application of paragraphs (d)(2)(i) through (iv) of this section, or \$13,000 (taxable income of \$75,000; regular tax liability of \$13,750). L's section 383 credit limitation is therefore \$4,420 (\$18,170 minus \$13,750).

(d) *Limitation on use of pre-change losses and pre-change credits*—(1) *In general.* The amount of taxable income of a new loss corporation for any post-change year that may be offset by pre-change losses shall not exceed the amount of the section 382 limitation for the post-change year. The amount of the regular tax liability of a new loss corporation for any post-change year that may be offset by pre-change credits shall not exceed the amount of the section 383 credit limitation for the post-change year.

(2) *Ordering rules for utilization of pre-change losses and pre-change credits and for absorption of the section 382 limitation and the section 383 credit limitation.* Pre-change losses described in any subdivision of this paragraph (d)(2) can offset taxable income in a post-change year only to the extent that the section 382 limitation for that year has not been absorbed by pre-change losses described in any lower-numbered subdivisions. Pre-change credits described in any subdivision of this paragraph (d)(2) can offset regular tax liability in a post-change year only to the extent that the section 383 credit limitation for that year has not been absorbed by pre-change credits described in any lower-numbered subdivisions. The section 382 limitation is absorbed by one dollar for each dollar of pre-change loss that is used to offset taxable income. The section 383 credit limitation is absorbed by one dollar for each dollar of pre-change credit that is used to offset regular tax liability. For each post-change year, the section 382 limitation and the section 383 credit limitation of a new loss corporation are absorbed by such corporation's pre-change losses and pre-change credits in the following order:

(i) Pre-change capital losses described in paragraph (c)(2)(iii) of this section that are recognized and are subject to the section 382 limitation in such post-change year,

(ii) Pre-change capital losses described in paragraphs (c)(2)(i) and (ii) of this section,

(iii) Pre-change losses that are described in § 1.382-2(a)(2) (other than losses that are pre-change capital losses) that are recognized and are sub-

ject to the section 382 limitation in such post-change year,

(iv) Pre-change losses not described in paragraphs (d)(2)(i) through (iii) of this section,

(v) Pre-change credits described in paragraph (c)(3)(i) of this section (excess foreign taxes),

(vi) Pre-change credits described in paragraph (c)(3)(ii) of this section (business credits), and

(vii) Pre-change credits described in paragraph (c)(3)(iii) of this section (minimum tax credit).

(3) *Coordination with other limitations*—(i) *In general.* Paragraphs (d)(1) and (2) of this section shall be applied after the application of all other limitations contained in subtitle A which are applicable to the use of a pre-change loss or pre-change credit in a post-change year. Thus, only otherwise currently allowable pre-change losses and pre-change credits will result in the absorption of the section 382 limitation and the section 383 credit limitation.

(ii) *Examples:*

Example (1). L is a calendar year taxpayer and has an ownership change on December 31, 1987. For 1988, L has taxable income of \$300,000, a regular tax liability of \$100,250 and a tentative minimum tax of \$90,000. L has no pre-change losses, but has a business credit carryforward from 1985 of \$25,000, no portion of which is due to the regular percentage of the investment tax credit under section 46. L has a section 382 limitation for 1988 of \$50,000. L's section 383 credit limitation is \$19,500, i.e., an amount equal to the excess of L's regular tax liability (\$100,250) over its regular tax liability calculated by allowing an additional deduction of \$50,000. Pursuant to the limitation contained in section 38(c), however, L is entitled to use only \$10,250 of its business credit carryforward in 1988. The unabsorbed portion of L's section 382 limitation (computed pursuant to paragraph (e) of this section) is carried forward under section 382(b)(2). The unused portion of L's business credit carryforward, \$14,750, is carried forward to the extent provided in section 39.

Example (2). Assume the same facts as in *Example (1)*, except that L's tentative minimum tax is \$70,000. L's use of its investment tax credit carryforward is no longer limited by section 38(c); however, pursuant to section 383 and this section, L is entitled to use only \$19,500 of its business credit carryforward in 1988. The unused portion of L's business credit carryforward, \$5,500, is carried forward to the extent provided in section 39.

There is no unused section 382 limitation to be carried forward.

(e) *Carryforward of unused section 382 limitation*—(1) *Computation of carryforward amount.* The section 382 limitation that can be carried forward under section 382(b)(2) is the excess, if any, of (i) the section 382 limitation for the post-change year remaining after the application of paragraphs (d)(2)(i) through (iv) of this section, over (ii) the section 383 credit reduction amount for that post-change year.

(2) *Section 383 credit reduction amount.* The section 383 credit reduction amount for a post-change year is equal to the amount of taxable income attributable to the portion of the new loss corporation's regular tax liability for the year that is offset by pre-change credits. Each dollar of regular tax liability that is offset by a dollar of pre-change credit is divided by the effective marginal rate at which that dollar of tax was imposed to determine the amount of taxable income that resulted in that particular dollar of regular tax liability. The sum of these "grossed-up" amounts for the taxable year is the section 383 credit reduction amount. In determining the effective marginal rate at which a dollar of tax was imposed, special rules regarding rates of tax (e.g., sections 11(b)(2) and (15) or taxable income brackets (e.g., section 1561), or both, shall be taken into account. See *Example (3)* in paragraph (f) of this section illustrating the effect of section 1561(a). Paragraph (e)(3) of this section illustrates the gross-up computation of the section 383 credit reduction amount based on the tax table and the rates of tax prescribed by section 11(b) as in effect for taxable years beginning on January 1, 1988.

(3) *Computation of section 383 credit reduction amount; illustration using tax rates and brackets in effect for calendar year 1988.* (i) Assuming no special rules regarding rates of tax or taxable income brackets apply, the section 383 credit reduction amount for a new loss corporation is the sum of the amounts determined under paragraphs (e)(3)(ii), (iii), (iv), (v), and (vi) of this section.

(ii) The amount determined under this subdivision (ii) is the amount (if any) by which pre-change credits offset

so much of the new loss corporation's regular tax liability as exceeds \$113,900, divided by 0.34.

(iii) The amount determined under this subdivision (e)(3)(iii) is the amount (if any) by which pre-change credits offset so much of the new loss corporation's regular tax liability as exceeds \$22,250 (but does not exceed \$113,900), divided by 0.39.

(iv) The amount determined under this subdivision (e)(3)(iv) is the amount (if any) by which pre-change credits offset so much of the new loss corporation's regular tax liability as exceeds \$13,750 (but does not exceed \$22,250), divided by 0.34.

(v) The amount determined under this subdivision (e)(3)(v) is the amount (if any) by which pre-change credits offset so much of the new loss corporation's regular tax liability as exceeds \$7,500 (but does not exceed \$13,750), divided by 0.25.

(vi) The amount determined under this subdivision (e)(3)(vi) is the amount (if any) by which pre-change credits offset so much of the new loss corporation's regular tax liability as does not exceed \$7,500, divided by 0.15.

(4) *Special rules for determining the section 383 credit reduction amount*—(i) *Ordering rules.* For purposes of this paragraph (e), credits, including pre-change credits, are considered to offset regular tax liability in the order that such credits are applied under the ordering rules of part IV of subchapter A of chapter 1 and section 904. For example, for purposes of this paragraph (e), excess foreign taxes carried over under section 904(c) (whether or not a pre-change credit) are considered (under section 38(c)) to offset regular tax liability before the general business credit carryovers to the taxable year are considered (under section 39) to offset regular tax liability before general business credits arising in the taxable year.

(ii) *Special rule for credits under section 38(a).* For purposes of applying this paragraph (e), credits under section 38(a) that, under section 38(c)(2) as applicable, taking into account amendments made by section 11813 of the Revenue Reconciliation Act of 1990, effectively offset both regular tax liability and the tax imposed by section 55

(relating to minimum tax), are considered to offset regular tax liability.

(f) *Examples.* The following examples illustrate the operation of paragraphs (b) through (e) of this section. For purposes of these examples, the term *modified tax liability* means the amount determined under paragraph (c)(6)(i)(B) of this section.

Example (1). (i) L, a calendar year taxpayer, has an ownership change on December 31, 1987. Before the application of carryovers, L, a new loss corporation, has \$60,000 of capital gain, \$100,000 of ordinary taxable income and a section 382 limitation of \$100,000 for its first post-change year beginning after the change date. L's only carryovers are an \$80,000 capital loss carryover and a \$100,000 net operating loss carryover. Both carryovers are from taxable years ending before the change date and thus are pre-change losses.

(ii) L first uses \$60,000 of its pre-change capital loss carryover to offset its capital gain. This reduces its section 382 limitation to \$40,000 (i.e., \$100,000-\$60,000). L's pre-change net operating loss carryover can therefore be used only to the extent of \$40,000. L's remaining \$20,000 pre-change capital loss carryover and remaining \$60,000 pre-change net operating loss carryover are carried to later years to the extent permitted under this section and sections 172, 382(1)(2) and 1212.

Example (2). (i) L, a calendar year taxpayer, has an ownership change on December 31, 1987. L has \$750,000 of ordinary taxable income (before the application of carryovers) and a section 382 limitation of \$1,500,000 for 1988. L's only carryovers are from pre-1987 taxable years and consist of a \$500,000 net operating loss ("NOL") carryover and a \$200,000 foreign tax credit carryover, all of which may be used under the section 904 limitation. The NOL carryover is a pre-change loss, and the foreign tax credit carryover is a pre-change credit. L has no other credits which can be used for 1988 and is not liable for an alternative minimum tax for 1988.

(ii) The following computation illustrates the application of this section for 1988:

1. Taxable income before carryovers	\$750,000
2. Pre-change NOL carryover	500,000
3. Section 382 limitation	1,500,000
4. Amount of pre-change NOL carryover that can be used (lesser of line 1, 2, or 3)	500,000
5. Taxable income (line 1 minus line 4)	250,000
6. Section 382 limitation remaining (line 3 minus line 4)	1,000,000
7. Pre-change credit carryover ...	200,000

8. Regular tax liability (line 5 × section 11 rates):	
\$50,000×0.15=\$7,500	
25,000×0.25=6,250	
25,000×0.34=8,500	
150,000×0.39=58,500	80,750
9. Modified tax liability (line 5 minus line 6 (but not less than zero)) × section 11 rates)	0
10. Section 383 credit limitation (line 8 minus line 9)	80,750
11. Amount of pre-change credits that can be used (lesser of line 7 or line 10)	80,750
12. Amount of pre-change credits to be carried over to 1989 under section 904(c) (line 7 minus line 11)	119,250
13. Section 383 credit reduction amount:	
(\$80,750 minus \$22,250)/	
0.39=\$150,000	
(\$22,250 minus \$13,750)/	
0.34=25,000	
(\$13,750 minus \$7,500)/	
0.25=25,000	
\$7,500/0.15=50,000	250,000
14. Section 382 limitation to be carried to 1989 under section 382(b)(2) (Line 6 minus line 13) ..	750,000

Example (3). (i) Assume the same facts as in *Example (2)*, except that, for purposes of section 1561(a), L is a component member of a controlled group of corporations and the taxable income of the controlled group of corporations for 1988 is \$2,000,000.

(ii) The following computation illustrates the application of this section for 1988:

1. Taxable income before carryovers	\$750,000
2. Pre-change NOL carryover	500,000
3. Section 382 limitation	1,500,000
4. Amount of pre-change NOL carryover that can be used (lesser of line 1, 2, or 3)	500,000
5. Taxable income (line 1 minus line 4)	250,000
6. Section 382 limitation remaining (line 3 minus line 4)	1,000,000
7. Pre-change credit carryover ...	200,000
8. Regular tax liability (line 5×0.34 (the effective section 11 rate under section 1561(a)))	85,000
9. Modified tax liability (line 5 minus line 6 (but not less than zero)) × section 11 rates)	0
10. Section 383 credit limitation (line 8 minus line 9)	85,000
11. Amount of pre-change credits that can be used (lesser of line 7 or line 10)	85,000
12. Amount of pre-change credits to be carried over to 1989 under section 904(c) (line 7 minus line 11)	115,000

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13. Section 383 credit reduction amount (line 11 divided by 0.34)	250,000
14. Section 383 limitation to be carried to 1989 under section 382(b)(2) (line 6 minus line 13) ...	750,000

Example (4) . (i) L, a calendar year taxpayer, has an ownership change on December 31, 1987. L has \$80,000 of ordinary taxable income (before the application of carryovers) and a section 382 limitation of \$25,000 for 1988, a post-change year. L's only carryover is from a pre-1987 taxable year and is a general business credit carryforward under section 39 in the amount of \$10,000 (no portion of which is attributable to the investment tax credit under section 46). The general business credit carryforward is a pre-change credit. L has no other credits which can be used for 1988 and is not liable for an alternative minimum tax for 1988.

(ii) The following computation illustrates the application of this section:

1. Taxable income	\$80,000
2. Section 382 limitation	25,000
3. Pre-change credit carryover	10,000
4. Regular tax liability (line 1 × section 11 rates):	
\$50,000×0.15=\$7,500	
25,000×0.25=6,250	
5,000×0.34=1,700	15,450
5. Modified tax liability ((line 1 minus line 2) × section 11 rates):	
\$50,000×0.15=\$7,500	
5,000×0.25=1,250	8,750
6. Section 383 credit limitation (line 4 minus line 5)	6,700
7. Amount of pre-change credits that can be used (lesser of line 3 or line 6)	6,700
8. Amount of pre-change credits to be carried over to 1989 under sections 39 and 382(l)(2) (line 3 minus line 7)	3,300
9. Regular tax payable (line 4 minus line 7)	8,750
10. Section 383 credit reduction amount:	
(\$15,450 minus \$13,750)/0.34=\$5,000	
(\$13,750 minus \$8,750)/0.25=20,000	25,000
11. Section 382 limitation to be carried to 1989 under section 382(b)(2) (line 2 minus line 10)	0

(g) *Coordination with section 382 and the regulations thereunder.* The rules and principles of section 382 (including, for example, section 382(b)(3) and section 382(l)(2)) and the regulations thereunder shall also apply with respect to section 383 and this section. To the extent section 382(h)(6) applies to credits, the principles of this section

apply to such credits. In applying the rules and principles of section 382 and the regulations thereunder, appropriate adjustments shall be made to take into account that section 383 and this section apply to pre-change capital losses and pre-change credits. For example, in applying § 1.382-2T (f)(18)(ii)(C), (f)(18)(iii)(C) and (h)(4)(ix), any pre-change credits, as defined in paragraph (c)(3) of this section, must be converted to a deduction equivalent by dividing the amount of such credits by the maximum effective rate of tax provided for under section 11 (e.g., 0.34 for taxable years beginning in 1989).

(h) *Alternative minimum tax.* See § 1.383-2T for the application of the limitations contained in sections 382 and 383 in computing the alternative minimum tax under section 55.

(i) [Reserved]

(j) *Effective date.* Subject to any exception from the application of section 382 or the section 382 limitation with respect to a loss corporation, section 383 and this section apply to any loss corporation with respect to which an ownership change occurs after December 31, 1986. See § 1.382-2T(m) for effective date rules relating to ownership changes. If section 383 was not taken into account or was applied other than in accordance with this section in a prior taxable year with respect to which section 383 applies, the taxpayer should, within the period of limitation, file an amended return and pay any additional tax due plus interest.

(k) Transitional rules regarding information statements—(1) *Exception.* An information statement described in § 1.382-2T(a)(2)(ii) of this section that would be required to be filed solely by reason of the loss corporation having pre-change capital losses (as defined in § 1.382-2T (a)(2)(ii)(A) and (B) or pre-change credits (as defined in paragraph (c)(3) of this section) is not required to be filed with the income tax return of the loss corporation for any taxable year for which the due date (including extensions) of the income tax return is on or before November 20, 1989, or for which the income tax return is filed on or before October 10, 1989.

(2) *Statement with respect to prior periods.* A corporation which is a loss corporation for any taxable year ending in

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1987, 1988 or 1989 solely because it has pre-change capital losses (as defined in paragraphs (c)(2)(i) and (ii) of this section or pre-change credits (as defined in paragraph (c)(3) of this section) must attach a separate information statement to its 1988 and 1989 income tax returns. Such information statement must (i) include the information specified in §1.382-2T (a)(2)(ii)(A) and (B) (without regard to testing dates before May 6, 1986) for each taxable year ending on or after May 6, 1986 for which the corporation was a loss corporation, (ii) state whether and to what extent pre-change capital losses (as defined in paragraphs (c)(2)(i) and (ii) of this section) or pre-change credits (as defined in paragraph (c)(3) of this section) utilized by the corporation in a taxable year to which the section 382 limitation applied, exceeded the amount permitted under this section, and (iii) be

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labeled "Information Statement with Respect to Transition Periods." For purposes of the preceding sentence, information previously reported in an information statement, including a statement filed with a 1988 return, may be excluded. The requirements of this paragraph (k)(2) apply only with respect to 1988 and 1989 taxable years with respect to which the due date of the income tax return (including extensions) is after November 20, 1989, and for which the income tax return is not filed on or before October 10, 1989.

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§ 1.383-2 Limitations on certain capital losses and excess credits in computing alternative minimum tax.
[Reserved]